

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

GENE GILBERT ELLIS,

Plaintiff,

v.

No. CIV 15-CV-00848-JCH-KBM

GERMAN FRANCO, *Warden*,  
VINCE VIGIL, *Housing Unit 2B Manager*,  
ALISHA TAFOYA-LUCERO,  
COLLEEN MCCARNEY,  
HECTOR CARDENAS,

Defendants.

**AMENDED ORDER FOR LIMITED *MARTINEZ* REPORT<sup>1</sup>**

This matter is before the Court on Plaintiff's Motions for Emergency Preliminary Injunction [Docs. 3, 15], Motions for Emergency Temporary Restraining Order [Docs. 4, 14], and Motion for Emergency Hearing [Doc. 22]. Plaintiff is incarcerated, appears pro se, and is proceeding in forma pauperis. In his motions, Plaintiff states, under penalty of perjury, that he is "in imminent danger among the general population" because he has received "threats of violence" from other inmates. [Doc. 3; *see also* Docs. 4, 14, 15] Additionally, Plaintiff states that he is "suffering severe mental and emotional traumas" as a result of his confinement in general population and that he is engaging in self-harm. [Doc. 22] Plaintiff seeks an emergency injunction requiring Defendants to transfer him to protective custody.

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<sup>1</sup> The docket does not reflect that the Court's original Order for Limited *Martinez* Report, filed on December 8, 2015, was mailed to Defendants. Therefore, the Court hereby files an Amended Order for Limited *Martinez* Report, which supercedes the Court's prior Order.

IT IS ORDERED that Defendants shall respond to Plaintiff's motions [Docs. 3, 4, 14, 15, 22] by filing a *Martinez* report addressing the allegations raised therein. *See Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991) ("When the pro se plaintiff is a prisoner, a court-authorized investigation and report by prison officials (referred to as a *Martinez* report) is not only proper, but may be necessary to develop a record sufficient to ascertain whether there are any factual or legal bases for the prisoner's claims."). In particular, the report must include information regarding the steps taken by Defendants to secure Plaintiff's physical safety, both from himself and other inmates, while confined in general population at the Penitentiary of New Mexico. Factual statements in the report must be supported by affidavits or documentary evidence. If the report cites any policies to support Defendants' actions, copies of those policies must be included. The submission of documents without a written report shall not be considered to be in compliance with this order.

IT IS FURTHER ORDERED that Defendants must file their limited *Martinez* report on or before **January 15, 2016**. Defendants must serve a copy of the report on Plaintiff, who will have until **February 1, 2016** to respond and/or object. **Due to the nature of Plaintiff's motions, any request for extension of time must be supported by a particularized showing of good cause and due diligence.**

IT IS FURTHER ORDERED that the Clerk of the Court is directed to send a copy of this Order to: (1) Defendants Franco, Tafoya-Lucero, and Cardenas at PNM, P.O. Box

1059, Santa Fe, NM 87504; (2) Defendant Vigil<sup>2</sup> at the Penitentiary of New Mexico, P.O. Box 1059, Santa Fe, NM 87504; and (3) Defendant McCarney at the New Mexico Corrections Department, P.O. Box 27116, Santa Fe, NM 87502;

IT IS FINALLY ORDERED that the Clerk is directed to issue notice and waiver of service forms, with a copy of the amended and supplemented complaint [Docs. 1, 11, 16, 17, 20, 21] and the Court's December 8, 2015 Memorandum Opinion and Order [Doc. 25] to Defendant Vigil at the Penitentiary of New Mexico, P.O. Box. 1059, Santa Fe, NM 87504.

**THE PARTIES ARE HEREBY GIVEN NOTICE that the *Martinez* report may be used in deciding whether to grant Plaintiff's motions for emergency injunctive relief. Therefore, the parties should submit whatever materials they consider relevant to the allegations raised in Plaintiff's motions. See *Hall*, 935 F.2d 1106.**

  
UNITED STATES CHIEF MAGISTRATE JUDGE

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<sup>2</sup> After the Court's original Order for a Limited *Martinez* Report was filed, Plaintiff informed the Court that Defendant Vigil was not "promoted to Warden at [Roswell Correctional Center]" but, instead, "is still here at the Penitentiary of New Mexico." [Doc. 27] Indeed, on December 23, 2015, the notice and waiver of service forms, the Court's December 8, 2015 Memorandum Opinion and Order, and copies of the amended and supplemented complaint [Docs. 1, 11, 16, 17, 20, 21], which were mailed to Defendant Vigil at the Roswell Correctional Center, were returned as undelivered. [Doc. 31] Therefore, the Court will direct the present Amended Order for Limited *Martinez* Report to be mailed to Defendant Vigil at PNM and will further order that the documents returned as undelivered be re-mailed to Defendant Vigil at PNM.